

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

VICTOR CRUZ,

Petitioner,

v.

LARRY SMALL, Warden, et al.,

Respondents.

CASE NO. 08-CV-1942 W (CAB)

**ORDER:**

**(1) ADOPTING REPORT AND  
RECOMMENDATION  
(DOC. NO. 24.)**

**(2) DENYING PETITION  
(DOC. NO. 1)**

On October 21, 2008, Petitioner Victor Cruz (“Petitioner”), a state prisoner proceeding *pro se*, filed this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) Petitioner challenges his 2006 conviction for assault with a deadly weapon, battery with serious bodily injury, giving false information to a peace officer, and threatening a witness. (Doc. No. 24 at 1.)

On February 5, 2010, Magistrate Judge Cathy Ann Bencivengo issued a Report and Recommendation (“Report”), recommending that the Court deny the Petition. The Report also ordered that any objections were to be filed by March 15, 2010. (*Report* at 8.) To date, no objection has been filed, nor has there been a request for additional time in which to file an objection.

A district court’s duties concerning a magistrate judge’s report and recommendation and a respondent’s objections thereto are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). When no objections are filed, the district court

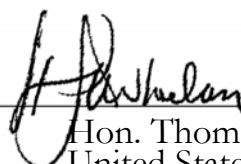
1 is not required to review the magistrate judge's report and recommendation. See United  
 2 States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003)(holding that 28 U.S.C.  
 3 636(b)(1)(c) "makes it clear that the district judge must review the magistrate judge's  
 4 findings and recommendations de novo *if objection is made*, but not otherwise")(emphasis in  
 5 original); Schmidt v. Johnstone, 263 F. Supp. 2d 1219, 1226 (D. Arizona 2003) (concluding  
 6 that where no objections were filed, the District Court had no obligation to review the  
 7 magistrate judge's Report). This rule of law is well established within the Ninth Circuit and  
 8 this district. See Wang v. Masaitis, 416 F.3d 992, 1000 n. 13 (9th Cir. 2005)("Of course,  
 9 de novo review of a R & R is **only** required when an objection is made to the R &  
 10 R.")(emphasis added)(citing Reyna-Tapia, 328 F.3d 1121); Nelson v. Giurbino, 395 F.  
 11 Supp. 2d 946, 949 (S.D. Cal. 2005) (Lorenz, J.) (adopted Report without review because  
 12 neither party filed objections to the Report despite the opportunity to do so, "accordingly,  
 13 the Court will adopt the Report and Recommendation in its entirety."); see also Nichols  
 14 v. Logan, 355 F. Supp. 2d 1155, 1157 (S.D. Cal. 2004) (Benitez, J.).

15 The Court, therefore, accepts Judge Bencivengo's recommendation, and **ADOPTS**  
 16 the Report (Doc. No. 24) in its entirety. For the reasons stated in the Report, which is  
 17 incorporated herein by reference, the Court **DISMISSES** the Petition **WITH**  
 18 **PREJUDICE**. (Doc. No. 1.)

19 Moreover, because the Court does not believe that reasonable jurists would find the  
 20 Court's assessment of the constitutional claims debatable or wrong it **DECLINES** to issue  
 21 a Certificate of Appealability. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

22  
 23 **IT IS SO ORDERED.**

24  
 25 DATED: May 24, 2010

26  
 27   
 28 Hon. Thomas J. Whelan  
 United States District Judge